

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 18196
[REDACTED]	)	
Petitioners.	)	DECISION
	)	
_____	)	

On July 14, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax and interest for the taxable year 2001 in the total amount of \$1,266.

On July 20, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but wish to rely upon their stated position in their letters dated July 20, 2004, and August 23, 2004. The Tax Commission, having reviewed the entire file, hereby issues its decision.

The taxpayers filed a 2001 nonresident Idaho income tax return reporting, among other things, the gain on the sale of Idaho property. The Income Tax Audit Bureau (Bureau) reviewed the taxpayers' return and determined that, since the taxpayers reported a net capital loss on their federal return, they were not entitled to the Idaho capital gains deduction claimed on their Idaho return. The Bureau corrected the taxpayers' return and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that Idaho Code section 63-3022H is not consistent with the proposed levy. The taxpayers stated that it is apparent the statute was written to deal with Idaho residents. The taxpayers believe the Idaho legislature probably never intended that a nonresident with out-of-state capital

losses could not have the capital gains deduction. The taxpayers point to two sentences in subsection (2) of Idaho Code section 63-3022H that the taxpayers believe give insight to the legislature's purported intent.

The first sentence is, "The deduction provided in this section is limited to the amount of capital gain net income from all property included in taxable income." The taxpayers stated that this limitation is obviously for residents only. Their reasoning is that it is highly unlikely that a nonresident will report net capital gains equal to the Idaho capital gain and the statute does not seek to tax nonresidents on intangible gains. The second sentence is, "The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero." The taxpayers believe because of the use of the phrase "relating to such property" the limitations and standards were meant for residents, not nonresidents.

The taxpayers stated the code recognizes loss offsets of a resident but not a nonresident. Consequently, the nonresident is denied the loss for one purpose (no offset) and is inflicted with the non-recognized loss with respect to the capital gain deduction. They said the anomaly is that if they were residents, they would have no capital gains and therefore no need for the capital gains deduction. However, as nonresidents they are being denied out-of-state capital losses and the Idaho capital gains deduction as well.

Idaho Code section 63-3022H stated, in pertinent part,

(1) If an individual taxpayer reports a net capital gain in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property

included in federal taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

The Bureau adjusted the taxpayers' 2001 return because their federal return reported a net capital loss. On the taxpayers' Idaho income tax return, they reported a capital gain and claimed the 80% capital gains deduction. The Bureau adjusted the taxpayers' return because the deduction is limited to the amount of the capital gain net income from all property included in taxable income. The taxpayers had no capital gain net income.

Idaho Code section 63-3022H states that if an individual has reported in taxable income a net capital gain, 80% (for tax year 2001) of the net capital gain from the sale of qualifying property shall be a deduction in determining taxable income. Taxable income is defined in Idaho Code section 63-3011B as federal taxable income as determined in the Internal Revenue Code (IRC). IRC section 1222(11) defines net capital gain as the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year. IRC section 1222(9) defines capital gain net income as the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.

For the taxable year 2001, the taxpayers reported both short-term and long-term capital gains. However, the taxpayers had a short-term capital loss carryover and a long-term capital loss carryover from the taxable year 2000. The net effect was that the taxpayers had both short-term and long-term capital losses for 2001. Therefore, for

taxable year 2001, the taxpayers had neither a net capital gain nor capital gain net income.

The Idaho Code allows a capital gain deduction if a net capital gain is included in taxable income. (Idaho Code section 63-3022H(1).) The taxpayers had a net capital loss used in determining taxable income. Consequently, the Idaho capital gains deduction is not available to them. Furthermore, the Idaho Code limits the amount of the capital gains deduction in subsection (2) of section 63-3022H to the amount of capital gain net income from all property included in federal taxable income. The taxpayers did not have capital gain net income. Therefore, according to Idaho Code section 63-3022H(2), the taxpayers' capital gains deduction is limited to zero.

The taxpayers argued the Idaho legislature never intended that a nonresident with out-of-state capital losses could not claim the capital gains deduction. They stated it is highly unlikely that a nonresident will report net capital gains equal to the Idaho capital gain. However, the taxpayers need not look very far to see that this is not true. If the taxpayers filed the same return for 2001 with the exception of their short-term and long-term capital loss carryovers, they would have received the full benefit of the Idaho capital gains deduction.

The taxpayers stated the code recognizes loss offsets of a resident but not a nonresident. Consequently, the nonresident is denied the loss for one purpose (no offset) and is inflicted with the non-recognized loss with respect to the capital gain deduction. As the taxpayers implied in their protest letter, Idaho has no jurisdiction to tax nonresidents on income from sources outside the state. Therefore, it seems unreasonable to say that nonresidents should be entitled to use out-of-state capital losses to offset Idaho

source income. The jurisdiction to tax nonresidents on the sale of property rests with the location of the property, in this case Idaho. Idaho then allows a capital gain deduction if the property qualifies. The deduction is available to both residents and nonresidents. The qualifications and limitations for the Idaho capital gains deduction apply equally to both residents and nonresidents.

The taxpayers implied the Idaho statute is unfair and discriminatory against nonresidents. The Tax Commission does not share this view. The Idaho statute treats residents and nonresidents the same. Both are required to have capital gain net income included in the determination of taxable income and both have to have qualified property. As previously stated, if the taxpayers' circumstances were only slightly different, i.e. no capital loss carryovers, the taxpayers could have claimed the full 80% deduction. Nevertheless, as it stands, the deduction is not available; and the Tax Commission must uphold the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated July 14, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2001	\$1,107	\$ 159	\$1,266
		REMITTANCE	(\$1,266)
		TOTAL DUE	\$ <u>0</u>

An explanation of the taxpayers' right to appeal this decision is included with this decision.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]  
[REDACTED]  
[REDACTED]

Receipt No.

\_\_\_\_\_